

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA	)	
and	)	
STATE OF NEW MEXICO, <i>ex rel.</i> STATE	)	
ENGINEER,	)	
	)	
Plaintiffs,	)	No. 01cv00072 BB/WDS
	)	
and	)	
	)	ZUNI RIVER BASIN
ZUNI INDIAN TRIBE, NAVAJO NATION,	)	ADJUDICATION
	)	
Plaintiffs in Intervention,	)	Subfile No. ZRB-1-0058
	)	
v.	)	
	)	
A & R PRODUCTIONS, et al.	)	
	)	
Defendants.	)	
_____	)	

**MOTION FOR DEFAULT JUDGMENT**

The Plaintiffs United States of America (“United States”) and New Mexico ex rel. State Engineer (“State”), pursuant to Fed. R. Civ P. 55(b)(2), move the Court to enter its order granting default judgment against the following defendant:

<b>RICHARD DAVIS MALLERY REVOCABLE TRUST</b>	<b>Subfile No. ZRB-1-0058</b>
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and as grounds therefor Plaintiffs state:

1. The Court has jurisdiction over the above-named defendant as shown by the defendant’s filed Entry of Appearance (Doc. No. 84).

2. RICHARD DAVIS MALLERY REVOCABLE TRUST was provided the documents listed in the Declaration of Gary A. Durr (Exhibit 1) on the dates indicated.

3. With respect to Subfile ZRB-1-0058, Defendant RICHARD DAVIS MALLERY REVOCABLE TRUST was subject to the Special Master's September 8, 2005 *Amended Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 4 and 8 of the Zuni River Stream System* (Doc. No. 387) ("Procedural and Scheduling Order"), which established a deadline of January 10, 2006, for the return of a signed Consent Order, or the filing of a form Subfile Answer.

4. These deadlines for Subfile ZRB-1-0058 were extended by the Order Granting Motion to Extend Consultation Period and Answer Date (Doc. No. 688), which extended the deadline to return a signed Consent Order or file a Subfile Answer to August 31, 2006.

5. Defendant RICHARD DAVIS MALLERY REVOCABLE TRUST is in default for failure to appear, answer, or otherwise defend in Subfile ZRB-1-0058 within the time limitations imposed by applicable Procedural and Scheduling Orders, or Orders of the Court extending deadlines, as shown by the Clerk's Certificate of Default filed June 18, 2008 (Doc.No. 1788).

6. In accordance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub Areas 4 and 8*, as amended, the right(s) of Defendant RICHARD DAVIS MALLERY REVOCABLE TRUST to divert and use the public waters of the Zuni River Stream System, Sub-Areas 4 and 8, should be as set forth below:

**RICHARD DAVIS MALLERY REVOCABLE TRUST**  
**Subfile No. ZRB-1-0058**

**STOCK POND**

**Map Label:** 4A-3-SP34

**Purpose of Use:** LIVESTOCK

**Priority date:** 1/1/1970

**Source of Water:** Surface Runoff

**Point of Diversion:** Not Applicable

**Amount of Water:**

**Depth (ft):** 1.0

**Surface Area (sq.ft):** 1,246

**Storage Impoundment Volume (ac-ft):** 0.017

**Pond Location:** As shown on Hydrographic Survey Map 4A-3

**S. 5 T. 10N R. 14W 1/4, 1/16, 1/64:** NE NW NW

**X(ft):** 2,572,812 **Y(ft):** 1,503,688

New Mexico State Plane Coordinate System, West Zone, NAD 1983

**Dam height (if greater than 9 ft):**

**WELL**

**Map Label:** 4A-3-W14

**OSE File No:** G 1660

**Priority Date:** 1/1/1989

**Purpose of Use:** DOMESTIC

**Well Location:** As shown on Hydrographic Survey Map 4A-3

**S. 5 T. 10N R. 14W 1/4, 1/16, 1/64:** NE NW NW

**X (ft):** 2,572,567    **Y (ft):** 1,503,532

New Mexico State Plane Coordinate System, West Zone, NAD 1983

**Amount of Water (ac-ft):** Historical beneficial use not to exceed 0.7 acre-feet  
per annum

WHEREFORE, the Plaintiffs request the Court to enter an order granting default judgment against the RICHARD DAVIS MALLERY REVOCABLE TRUST, incorporating the terms of the Consent Order proposed for Subfile ZRB-1-0058 and in conformance with the *Zuni River Basin Adjudication Hydrographic Survey Report for Sub Areas 4 and 8*, as amended.

Dated: June 25, 2008

Electronically Filed

/s/ Bradley S. Bridgewater

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EX REL. STATE ENGINEER

